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10/765,834	01/29/2004	Yoshiki Nobuto	248226US0	2367

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

STEELE, JENNIFER A

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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08/13/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/765,834	Applicant(s) NOBUTO ET AL.	
	Examiner JENNIFER STEELE	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 1 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The previous Office Action rejection of 12/20/2007 is maintained as the claims as written are not amended. The previous Office Action rejection is included below.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. See Ex parte Grasselli, 231 USPQ 393 (Bd. App. 1983), aff'd mem., 783 F.2d453 (Fed. Cir. 1984). The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim recites the limitation "wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic

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polymer having a JIS A hardness of 90-97." The specification does not recite this limitation. The specification teaches:

"the microfibrillar fiber made of an elastic polymer (elastic microfibrillar fiber) and the microfibrillar fiber made of a non-elastic polymer (non-elastic microfibrillar fiber) used in the present invention are each produced by removing an island component by dissolution or decomposition from a microfibrillar fiber-forming fibers which is made of at least two different polymers...an elastic polymer is used in the microfibrillar fiber-forming fiber (A') for forming the microfibrillar fiber bundle (A), and a non-elastic polymer in the microfibrillar fiber-forming fiber (B') for forming the microfibrillar fiber bundle (B)" (specification pg 6, lines 3-13)

Where the microfibrillar fiber-forming fiber (A') is described to be elastic and used to form the fiber bundle (A) and the microfibrillar fiber-forming fiber (B') is non-elastic and used to form fiber bundle (B). However the specification continues to describe a process where the microfibrillar fiber-forming fibers (A') and (B') are mixed or blended.

"both sea components are removed after mixing the microfibrillar fiber-forming fibers (A') and (B')." (specification pg 11, lines 7-8).

"After blending, the microfibrillar fiber-forming fibers (A') and (B") are made into microfibrillar fibers to form the microfibrillar fiber bundles (A) and (B), respectively. The blending ratio, (A')/(B'), should be selected so that a blending ratio, microfibrillar fiber bundle (A)/microfibrillar fiber bundle (B) is 30/70 to 70/30 by mass when the microfibrillar fiber-forming fibers (A') and (B') are made into the microfibrillar fibers" (specification pg 12-13, lines 26-29, 1-2)

"The method of blending microfibrillar fiber bundles (A) and (B) may include a method in which the microfibrillar fiber-forming fibers (A') and (B') in a predetermined ratio are gathered into a bunch which is then drawn, crimped and cut to obtain a mixed raw stock, and a method in which microfibrillar fiber-forming fibers (A') and (B') are separately drawn, crimped and cut to produced respective raw stocks which are then blended in a blender" (specification pg. 13, lines 9-15).

The description in the specification does not support the limitation that the microfibrillar fiber bundles of (A) and (B) are made of exclusively (A') where (A') is elastic and (B') where (B') is non-elastic. The description describes a process where the microfibrillar fiber-forming fibers are blended. The specification does not teach or disclose specifically that non-elastic polymers are not included in (A) and that microfibrillar fibers which have a single fiber fineness of 0.5 dtex or less and which are made of elastic

polymer are not in (B). While it is clear that microfine fiber-forming fiber (A') is an elastic polymer and microfine fiber-forming fiber (B') is a non-elastic polymer. The specification is not clear that (A') and (B') are not blended before becoming microfine fiber bundles (A) and (B). Therefore the current application can not be distinguished over the prior art. As the specification does not teach that (A') and (B') must not be blended in order to produce a fabric of unexpected results or improved characteristics, and the specification does not teach a specific embodiment as stated in claim 1, the claim limitation is considered subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 102(e)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

2. Claim 1 and 6 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6767853 to Nakayama et al. which teaches a fibrous substrate for artificial leather comprising microfine fiber bundles of (A) and (B) where (A) is elastic and (B) is non-elastic. The previous Office Action rejection of 12/20/2007 is maintained as the claims as written are not amended. The previous Office Action rejection is included below.

The Nakayama reference teaches a fibrous substrate for artificial leather, comprising microfine fiber bundles composed of 3-50 microfine elastic fibers (A)(ABST). The elastic fibers (A), and bundles formed therefrom, are analogous to the claimed microfine bundles (A) comprising 10 to 100 microfine fibers. The claimed microfine fibers have a fineness of 0.5 dtex or less; the analogous elastic fibers of the prior art have a fineness of 0.5 denier or less, thus meeting the claim limitations. The prior art further teaches microfine fiber bundles (B) comprising inelastic polymer fibers (ABST). The fiber bundles (B) are analogous to the claimed microfine fiber bundle (B). The fibers of the prior art bundles (B) have a fineness of 0.2 denier, which meets the limitation of claim 1, requiring fibers of the (B) bundle having a fineness of 0.5 dtex or less.

Regarding the claimed blending ratio, the prior art teaches a blending ratio A/B of 10/90 to 60/40, thus overlapping the claimed blending ratio. Furthermore, the reference teaches (col. 9, lines 17+) impregnation with an elastomeric polymer, as required by claim 1. Thus, the limitations of claim 1 are met by the prior art under 35 USC 102(e).

Regarding claim 6, a grained leather-like material is disclosed (col. 10, lines 9, 43). As to claim 6, Nakayama teaches coating at least one surface of the substrate with a resin layer (claim 7). A resin layer is a film.

Claim Rejections - 35 USC § 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakayama (referred to as Takeshi et al in previous Office Action of 11/27/2007) EP 1067234 A. The previous Office Action rejection of 12/20/2007 is maintained as the claims as written are not amended. The previous Office Action rejection is included below.

The Nakayama reference teaches a fibrous substrate for artificial leather, comprising microfine fiber bundles of elastic fibers (A) and a microfine fiber bundles of nonelastic fibers (B). The weight ratio of (A) to (B) bundles is 10/90-60/40. The current application teaches a fibrous substrate with weight ratio of (A) and (B) bundles within this range of 30/70 and 70/30. The Nakayama reference teaches 3-50 numbers of

microfine fibers (A) or fineness 0.5 denier or less which is considered the same as current application claim 1 of 10-100 microfine fibers of 0.5dtex. The Nakayama reference teaches 15 or more numbers of microfine fibers (B) while the current application does not specify the number of (B) microfine fibers. While Nakayama does not teach that microfine fibers (A) have a JIS A hardness between 90-97, this claim is not considered distinct because "when the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in In re Fitzgerald, 619 F.2d 67, 205 USPQ 594 (CCPA 1980)."

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakayama EP 1067234 A. Nakayama, teaches impregnating the substrate with an elastic polymer as stated in Claim 1. Nakayama teaches coating at least one surface of the substrate with a resin layer (claim 7). A resin layer is a film.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claim 1 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama EP 1067234 A. The previous Office Action rejection of 12/20/2007 is maintained as the claims as written are not amended. The previous Office Action rejection is included below.

The Nakayama reference teaches a fibrous substrate for artificial leather, comprising microfine fiber bundles of elastic fibers (A) and a microfine fiber bundles of nonelastic fibers (B). Nakayama differs from the current application and does not teach the limitation that the microfine fiber bundle (A) does not contain fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97. Nakayama teaches that an elastic polymer cannot be made into microfibers according to the prior art, so that the texture and appearance like natural leather cannot be gained (col. 2, lines 48-49). Thus Nakayama teaches elastic microfine fibers and nonelastic microfine fibers are integrated into bundles so that the elastic polymer does not agglutinate to each other upon extraction of the sea component. Nakayama teaches the ratio of elastic polymer to

nonelastic polymer is important to avoid agglutination which results in a dense structure that is hard (col. 5, lines 52-57). Nakayama teaches the number of strands of elastic fibers and nonelastic fibers as well as the denier less than 1 is important to achieving the desired fabric with surface denseness and smoothness (col. 5, lines 13-50).

Nakayama teaches the fabric is entangled and therefore the fibers will be mixed.

Nakayama teaches a ratio of elastic and nonelastic microfine fibers and the structural limitation ranges that produce an elastic leather-like fabric and therefore presents a finding that one of ordinary skill in the art would have recognized that employing a ratio of elastic to non-elastic microfine fibers and fiber bundles would have yielded predictable results.

5. Claim 2-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama EP 1067234 A in view of Kato et al. (US 4,476,186). The previous Office Action rejection of 12/20/2007 is maintained as the claims as written are not amended. The previous Office Action rejection is included below.

The Nakayama reference teaches a fibrous substrate for artificial leather, comprising microfine fiber bundles of elastic fibers (A) and a microfine fiber bundles of nonelastic fibers (B). As to claim 2, 4 and 5, Nakayama differs from the current application and does not teach that the elastic microfine fibers in the bundle (A) laterally stick together while keeping their original fibrous shape, and that the sticking length is 2/3 or less of the fiber diameter. Nakayama does not teach that the raised single fibers of the microfine fiber in the fiber bundle (A) do not stick to each other.

Kato teaches an entangled non-woven fabric having a fiber structure which comprises an ultrafine fiber bundle of fiber size not greater than about 0.5 denier that are entangled so that a portion (A) of the fiber bundles are entangled with one another and another portion (B) of the ultrafine fiber bundles have the fine fibers branching from the bundles (ABST). Kato teaches that the ultrafine fibers and fine bundles of ultrafine fibers are entangled with one another and in which both portions (A) and (B) are nonuniformly distributed in the direction of fabric thickness (col. 2 lines 40-43). Kato teaches the fiber sheet is treated with high speed fluid jet streams to branch the ultrafine fibers to fine bundles of ultrafine fibers and to simultaneously entangle the fibers and their bundles (col. 10, lines 35-39). Kato teaches this structure relates to a grained sheet having on at least one of its surfaces a grain formed by the fiber structure composed of ultrafine fibers to fine bundles of ultrafine fibers and having a distance between the fiber entangling points of not greater than about 200 microns and a resin in the gap portions to the fiber structure (ABST). Kato teaches a non-woven fabric for synthetic leather and teaches a grained surface that improves flexibility, shearing fatigue resistance and scratches and scuff resistance (col. 2, lines 26-30). Kato teaches a suede-like surface having a dense and beautiful fluff and the fluff was seen continuing from the secondary fiber bundles (col. 18, lines 28-30). Kato teaches the surface of the finished sheet had a grain that was composed of the fibrillated fibers and the resin encompassing the fibrillated fibers (col. 18, lines 20-30).

It would have been obvious to one of ordinary skill in the art to produce a leather-like substrate of Nakayama with the structure of Kato motivated to produce a suede-like

surface and a grain that is flexible, durable and soft. It further would have been obvious to provide a surface treatment that left a sticking length of 2/3 or less of the fiber diameter motivated to produce a surface with a soft feel that would duplicate suede leather.

As to Claim 3, Nakayama differs from the claimed invention because it does not teach that a powder is present within the fibrous material of (A). Kato et al references using fine particles or fillers to form the grain and facilitate fibrillation. See US 4476186 col. 1 line 50. Kato's inventions claim Ultrafine Fiber Entangled Sheet non-woven fabrics having a fiber structure that comprises a portion (A) of ultrafine fiber bundles entangled with (B) of ultrafine fiber bundles. Kato's inventions both reference various fillers and fine particles that can be added to improve grain and fibrillate fibers. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated a fine particle into the entangled non-woven substrate sheet motivated by the expectation of improved grain and fiber fibrillation.

6. Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama in view of Minami, EP 1213377 A1. The previous Office Action rejection of 12/20/2007 is maintained as the claims as written are not amended. The previous Office Action rejection is included below.

Nakayama discloses an artificial leather material as set forth in the preceding paragraph. Nakayama differs from the claimed invention because it does not teach that a powder is present within the fibrous material of (A). Minami teaches use of a powder

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affixed in nonwoven fabric manufactured from islands-in-sea type fibers. Minami claims a powders-affixed nonwoven fabric comprising of powders less than 50 micron, affixed in fiber web of fiber diameter of 4 micron or less with a length of 3 mm or less and cite examples using fibers of 0.5 denier. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated a fine particle into the entangled non-woven substrate motivated by the expectation that this would enhance fibrillation of the fiber material of Nakayama.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1,2,4-6 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 and 15 of U.S. Patent No. 6767853.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both claim a fibrous substrate for artificial leather-like fabric comprising microfine fiber bundles (A) and (B).

Response to Arguments

7. Applicant's arguments filed 4/21/2008 have been fully considered but they are not persuasive. Applicants disagree with the alleged lack of basis in the specification for the negative limitation of claim 1. Applicants present implicit support for the negative limitation and quote the specification, page 3 with the explanation that it should be noted that the mixed or blended microfine fiber forming fibers and not the elastic and the non-elastic microfine fibers. In the process of mixing or blending the microfine fiber-forming fibers (A') and (B'), the elastic microfine and the non-elastic microfine fibers cannot be mixed or blended and that the mixing and blending of the microfine fiber-forming fibers (A') and (B') does not result in the mixing and blending of the elastic microfine fibers and the non-elastic microfine fibers. Examiner maintains that the disclosure does not state that bundle (A) does not include fiber-forming fibers (B') and bundle (B) does not include fiber-forming fibers (A'). It is further noted that the examples provided in pages 22-30 also do not disclose the fiber forming fibers become bundles (A) and (B) where (A) does not include (B') and bundle (B) does not include (A'). Example 1 describe staple fibers produced of spinning example 1 (polyurethane as the island component and polyethylene as the sea component) and spinning example 5 (nylon as the island component and polyethylene as the sea component). Example 1 is prepared by blending in a ratio of a 50/50 of the staples of spinning example 1 and spinning example

5. The blended staples are made into a web of 260 gsm by cross-lap method. The web was needle-punched and shrunk in hot water and dried and pressed by calendar rolls and then impregnated with a polyurethane emulsion and the polyethylene component was removed by extraction in toluene. The microfine fiber bundle derived from the microfine fiber-forming fiber of spinning example 1, the polyurethane microfine fibers partially stuck together. This sticking structure, the leather-like sheet substrate had a sufficient mechanical strength and good stretchability. Spinning examples 1-5 do not describe making bundles. As the Example describes blending the spinning samples of 1 and 5, which are equated with elastic and nonelastic fibers it is not clear if the fibers are blended or the bundles are blended. Wherein the limitation that the elastic fiber forming fibers are formed into bundles exclusively of elastic fibers is claimed and critical to the novelty of the invention, the specification does not disclose this critical step of forming the elastic fiber-forming fibers into bundles before blending with the nonelastic fiber-forming fibers. Applicant provides a drawing to further understand Applicant's arguments, where the left hand side of the drawing indicates elastic microfine fibers and non-elastic microfine fibers. On the right side of the drawing the same lines that are indicated as elastic microfine fibers is now called a microfine fiber bundle (A). The drawing serves to equate bundle with fiber. This is contrary to the arguments shown on page 8 where bundles comprise more than 1 fiber. As the drawings are not part of the specification and disclosure, the specification fails to describe the negative limitation of claim 1.

8. Applicants argue that the reference to Nakayama discloses bundles comprised of A and B and that is not the same as claim 1 recitation that the bundles A can not contain nonelastic fibers and bundles B can not contain elastic fibers. Examiner maintains that the specification as disclosed does not teach that A does not contain B and B does not contain A. Applicant's specification teaches A' fiber-forming fibers and B' fiber-forming fibers and teaches these fibers can be blended. The link between an exclusive bundle of A' and exclusive bundle of B' is not in the disclosure such that one of ordinary skill in the art can make the invention

9. Applicants argue that Examiner recognizes that the fiber bundles of Nakayama comprised both microfine fiber A and microfine fiber B and therefore Nakayama can not anticipate the current invention. As disclosed, the current Applicant does not clearly differentiate that the fiber bundles do not contain a mixture of A and B and therefore Applicant's arguments are not persuasive and the current 102(b) and (e) rejections are maintained. In addition, further grounds of rejection as to 35 USC 103(a) over Nakayama is also presented. The link between an exclusive bundle of A' and exclusive bundle of B' is not in the disclosure such that one of ordinary skill in the art can make the invention and there is no evidence that the exclusive bundles that are blended would present a different fabric or a fabric of unexpected properties or results from the invention of Nakayama.

10. Applicant traverses the rejections over Nakayama in view of Minami and Kato as Minami and Kato do not disclose the claimed elastic fiber bundle (A) and non-elastic fiber bundle (B) and therefore the combination does not remedy the deficiency of

Nakayama. As stated above, the previous 35 USC 102(b) and (e) and 103(a) rejections with respect to Nakayama are maintained and therefore the 35 USC 103(a) rejections with respect to Nakayama in view of Minami and Kato are maintained. Applicant presents the structure of Nakayama and the structure of the present Application in the diagrams. Examiner notes that these diagrams are not disclosed in Nakayama nor the current application and Examiner is relying on the claims and specification as disclosed and the disclosure of the prior art. While these two diagrams indicate a different materials in the fiber bundles which could produce a fabric with different properties, the disclosures do not clearly describe that these are the differences between the current application and the prior art to Nakayama.

11. Applicant argues that Examiner did not respond to Applicant's arguments with respect the Obviousness Double Patenting rejection over US 6,767,853. As stated in the rejection, while the claims are not identical, they are not patentably distinct from each other because both claim a fibrous substrate for artificial leather-like fabric comprising microfine fiber bundles (A) and (B). As noted above, while the diagrams presented in Applicant's arguments shown two different structures, the Applicant's specification does not support this disclosure and as such the claims of the current application describe substantially the same structure as the patent US 6,767,853.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER STEELE whose telephone number is (571)272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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